

HR Weekly Podcast

4-23-2008

Today is April 23, 2008, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns a recent United States Supreme Court decision concerning the Age Discrimination in Employment Act, or ADEA.

Federal Express Corporation adopted compensation programs which tied couriers' compensation and continued employment to performance benchmarks. Fourteen current and former FedEx couriers, all over 40 years old, filed suit alleging these programs violated the ADEA and were attempts to force older workers out of the company before they became entitled to receive retirement benefits.

FedEx responded that the suit was not timely. That response was based on the failure of one employee, Patricia Kennedy, to file the required charge with the Equal Employment Opportunity Commission, or EEOC.

The FedEx couriers countered that Kennedy's intake questionnaire and accompanying affidavit constituted a charge. Disagreeing, FedEx responded that the intake questionnaire was not a charge because the EEOC's Tampa office did not treat it as a charge and never notified FedEx.

The district court determined that there was no charge and granted a motion to dismiss by FedEx. The Second United States Circuit Court reversed the district court's decision. The ADEA does not define the word "charge." The Second Circuit noted that the EEOC regulations interpreting the ADEA provide that the charge requirement has been met when "[the] EEOC receives a 'writing' or information that an EEOC employee reduces to writing from the person making the charge that names the employer and generally describes the allegedly discriminatory acts."

Six circuit courts have addressed whether an intake questionnaire may constitute a charge under the ADEA. Because the circuit courts had differing opinions, the Supreme Court granted review. On appeal, the Supreme Court upheld the Second Circuit decision agreeing with the EEOC's position that an employee's filing can constitute a charge if it can be "reasonably construed as a request for the agency to take remedial action to protect the employee's rights."

Analyzing the Kennedy fact situation, the Supreme Court observed that the intake form contained all of the information required by the EEOC regulations plus the affidavit included a statement asking the EEOC to "force [FedEx] to end [its] age discrimination plan." In addition, Kennedy consented to the EEOC disclosing the affidavit in a formal proceeding. The Supreme Court concluded that the facts here were enough to bring the entire filing within the Court's definition of charge.

This case, ***Federal Express Corp. v. Holowecki***, appears to extinguish an employer's ability to argue it was protected against a lawsuit because the EEOC failed to give it notice. By the Supreme Court expanding what can constitute an EEOC charge, some have argued that this case has already resulted in a spike in the number of charges filed with the EEOC this fiscal year.

If you have any questions about this issue, please contact your OHR consultant at 803-737-0900.

Thank you.